

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

04-CR-6143L

v.

ROBINSON SANCHEZ,
a/k/a “Guillermo Nieves,”

Defendant.

The Court referred all pretrial motions to United States Magistrate Judge Jonathan W. Feldman pursuant to 28 U.S.C. § 636(b). The defendant, Robinson Sanchez (“Sanchez”), filed several motions, including: a motion to suppress physical evidence, a motion to dismiss the indictment, a motion for disclosure of the Government’s confidential informant, and a motion for severance.

Magistrate Judge Feldman held a suppression hearing concerning Sanchez’s motion to suppress and he then issued a thorough Report and Recommendation (Dkt. #228) in which he recommended that all of Sanchez’s motions be denied. Sanchez timely objected to the Report and Recommendation and challenges all of the Magistrate Judge’s adverse rulings.

For the reasons that follow, I accept the Report and Recommendation of Magistrate Judge Feldman, I concur with his recommendation and I, therefore, deny defendant’s motions.

Suppression of Evidence

Magistrate Judge Feldman discussed several issues surrounding the seizure of evidence, including defendant's standing to contest the execution of a search warrant at a hotel in Greece, New York on August 26, 2004. I agree with Magistrate Judge Feldman that Sanchez had no expectation of privacy in one of the rooms searched (Room #215). Magistrate Judge Feldman also discussed Sanchez's consent to search the other room (Room #203), as well as the preparation and execution of an oral search warrant for the premises. I concur with Magistrate Judge Feldman that there is no basis to suppress the physical evidence, including any statements made by Sanchez during the execution of the warrants.

Furthermore, I agree with Magistrate Judge Feldman that the officers had an objective good faith basis to rely on both the telephonic warrant issued by the County Court Judge, as well as the written warrant. Under principles of *United States v. Leon*, 468 U.S. 897, suppression is not appropriate.

Motion To Dismiss for Vindictive Prosecution

Sanchez also moves to dismiss the forth superseding indictment on the grounds of vindictive prosecution. I agree with Magistrate Judge Feldman's summary of the law and his conclusion, based on the facts of this case, that Sanchez has failed to demonstrate any vindictive prosecution warranting dismissal. The fact the Government sets deadlines for accepting plea bargains to reduced charges does not transform the prosecution into a vindictive one if defendant declines to accept the plea. Under these circumstances, it is not inappropriate for the Government to proceed to charge and prosecute based on the evidence available.

Confidential Informant and Severance

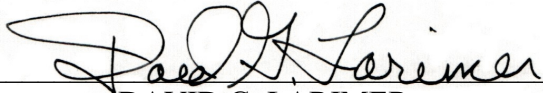
I also agree with Magistrate Judge Feldman's analysis of Sanchez's request for disclosure of the confidential informant and for severance from his co-defendants. I agree with Magistrate Judge Feldman that neither application warrants relief. There has been no demonstration that the confidential informant was present or a participant in the incident that led to Sanchez's arrest. Magistrate Judge Feldman sets forth the authority in the Second Circuit relating to disclosure of informants and defendant has failed to meet the test here.

Similarly, Sanchez's motion for a severance should be denied. Generally, those charged with joint criminal activity, for example, in a conspiracy, should be tried together and defendant has a heavy burden of obtaining severance in a separate trial. Magistrate Judge Feldman recommended that the motion be denied without prejudice, allowing Sanchez to renew in the district court should there be additional facts to warrant such an application.

CONCLUSION

I accept and adopt the Report and Recommendation (Dkt. #228) of United States Magistrate Judge Jonathan W. Feldman. I concur in his summary of the facts and conclusions of law. Defendant's motion for suppression of physical evidence, defendant's motion to dismiss the indictment, defendant's motion for disclosure of the confidential informant and defendant's motion for a severance are all denied.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
December 21, 2006.